

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

ROGER J. DAY, M.D.,

Plaintiff,

v.

ORDER

Civil File No. 05-2675 (MJD/RLE)

STATE OF MINNESOTA, et al.,

Defendants.

Richard I. Diamond, Richard I. Diamond, PA, Counsel for Plaintiff.

Thomas C. Vasaly, Minnesota Attorney General's Office, Counsel for Defendants.

This matter is before the Court on Plaintiff Roger J. Day's Motion to Sanction and Remove Magistrate Judge Raymond L. Erickson. [Docket No. 206]

The Court denies Day's motion. First, Day's nondispositive motion for recusal and sanction of Chief Magistrate Judge Erickson should be properly brought before Chief Magistrate Judge Erickson. Local Rule 7.1(a).; In re Bernard, 31 F.3d 842, 843 (9th Cir. 1994) (holding that "the motion is addressed to, and must be decided by, the very judge whose impartiality is being questioned"); Modena v. United States, Civil No. 06-2865 ADM/JSM, 2006 WL

3030965, at *2 (D. Minn. Oct. 23, 2006) (unpublished) (“If Judge Mayeron is named as a defendant in an Amended Complaint, she will rule on her own disqualification in the first instance.”) (citing 28 U.S.C. § 455) (footnote omitted).

Additionally, Day’s motion and affidavit provide an insufficient basis for recusal or sanction. Recusal is warranted if the judge’s “impartiality might reasonably be questioned.” 28 U.S.C. § 455(a). Thus, recusal should be granted if it is shown that the court has a “personal bias or a prejudice arising from an extrajudicial source.” Rossbach v. United States, 878 F.2d 1088, 1089 (8th Cir. 1989) (citation omitted). “Decisions on recusal or disqualification motions are committed to the district court’s sound discretion.” Larson v. United States, 835 F.2d 169, 172 (8th Cir. 1987) (citation omitted). Day has provided one supposed example of bias. The Court has examined Day’s accusation and finds it woefully lacking as an example of bias or sanctionable behavior.

Finally, Day’s request for additional time to object to Chief Magistrate Judge Erickson’s Report and Recommendation is denied. The Court already granted Day extensive extensions. [Docket Nos. 183, 197] It has also previously denied Day’s request to extend the time to file his objections beyond October 15, 2007. [Docket 204] Finally, Day has already filed objections to the Report and Recommendation. [Docket No. 210]

IT IS HEREBY ORDERED that

Plaintiff Roger J. Day's Motion to Sanction and Remove Magistrate Judge Raymond L. Erickson [Docket No. 206] is **DENIED**.

Dated: December 6, 2007

s / Michael J. Davis

Judge Michael J. Davis
United States District Court